

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BRAD HANGSLEBEN,

Petitioner,

v.

Case No. 04-71190

MILLICENT WARREN,

Honorable Patrick J. Duggan

Respondent.

/

**OPINION AND ORDER GRANTING RESPONDENT'S MOTION FOR
SUMMARY JUDGMENT AND DISMISSAL OF PETITION FOR WRIT OF
HABEAS CORPUS**

At a session of said Court, held in the U.S.
District Courthouse, Eastern District
of Michigan, on September 14, 2005.

PRESENT: THE HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

On June 17, 1977, Petitioner was convicted of second degree murder and sentenced to two concurrent non-mandatory life sentences in the Circuit Court for the County of Saginaw, Michigan. On March 16, 2004, Petitioner filed a petition for habeas corpus relief, pursuant to 28 U.S.C. § 2254. Petitioner challenges the Michigan Parole Board's decision to deny him parole. On October 12, 2004, Respondent filed a motion for summary judgment arguing that the petition is barred by the statute of limitations set forth in the Antiterrorism and Effective Death Penalty Act, 28 U.S.C. § 2244. This Court

referred the motion to Magistrate Judge Mona K. Majzoub pursuant to 28 U.S.C. § 636.

On August 4, 2005, Magistrate Judge Majzoub issued a Report and Recommendation (R&R) recommending that this Court grant Respondent's motion for judgment. At the conclusion of the R&R, Magistrate Judge Majzoub advises the parties that they may object and seek review of the R&R within ten days of service upon them. She further specifically advised the parties that "Failure to file specific objections constitutes a waiver of any further right of appeal." *Citing Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec'y of Health and Human Servs.*, 932 F.2d 505 (6th Cir. 1991); and *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).¹

The Court, however, has carefully reviewed the R&R and concurs with Magistrate Judge Majzoub's conclusion that Respondent's motion for summary judgment and dismissal of the petition for writ of habeas corpus should be granted and Petitioner's application for writ of habeas corpus should be denied.

Accordingly,

IT IS ORDERED, that Respondent's motion for summary judgment is

¹In *United States v. Walters*, the Sixth Circuit held that a party waives his or her right to appeal by failing to file objections to a magistrate judge's report and recommendation within ten days, provided the magistrate judge notified the parties that failure to file objections constitutes a waiver of appeal. 638 F.2d 957, 949-50 (6th Cir. 1981). The Supreme Court affirmed the Districts' power to impose such an administrative rule in *Thomas v. Arn*, 474 U.S. 140, 105 S. Ct. 466 (1985); see also *Howard v. Sec'y of Health and Human Servs.*, 932 F. 2d 505, 508 (6th Cir. 1991). Magistrate Judge Majzoub notified the parties that failure to file objections would constitute a waiver of their right to appeal; nevertheless, Petitioner failed to file any objections to the R&R. Therefore, Petitioner has waived his right to appeal.

GRANTED;

IT IS FURTHER ORDERED, that Petitioner's application for writ of habeas corpus is **DENIED.**

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

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Magistrate Judge Mona K. Majzoub